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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

LEON THOMPSON, Jr., Plaintiff and Appellant, v. CRUSADER INSURANCE COMPANY, Defendant and Respondent.	B280559 (Los Angeles County Super. Ct. No. BC533692)

APPEAL from a judgment of the Superior Court of Los Angeles County. Benny C. Osorio, Judge. Affirmed.

The Younger Law Firm and Robert J. Younger for Plaintiff and Appellant.

Turner Friedman Morris & Cohan, Matthew C. Wolf and Lauren K. VanDenburg for Defendant and Respondent.

SUMMARY

Plaintiff Leon Thompson, Jr., sued defendant Beverly Wynder,[1] the owner and operator of Morningside Park Barber Shop, after plaintiff was wounded in an exchange of gunfire with an unknown assailant during the assailant's attempted robbery of the barber shop. The substance of plaintiff's claim was that defendant should have had security measures in place "to deter and prevent this type of incident" – specifically, a "security door that would allow the employees to buzz in customers." Plaintiff alleged defendant's failure to provide a security door, despite her knowledge of robberies in the neighborhood and the modest cost of a security door, was "the direct, proximate, substantial, and legal cause" of his injuries.

Defendant moved for summary judgment. The trial court found defendant's knowledge of robberies in the immediate vicinity of her shop "made it foreseeable that violent crime may occur on Morningside's premises." But, assuming defendant breached her duty of care, plaintiff could not establish that the failure to provide a security door caused plaintiff's injuries. The undisputed evidence showed that neither plaintiff nor defendant had any reason to suspect the assailant was dangerous or posed a threat when he entered the barber shop. Thus, even if defendant had installed a security door, defendant "would have still allowed the assailant to enter," as both she and plaintiff thought the assailant was a customer or vendor. Because plaintiff produced no evidence to the contrary, the trial court granted defendant's motion for summary judgment.

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[1] Defendant died during the litigation. On September 21, 2018, Crusader Insurance Company was substituted in her place.

We affirm the judgment.

FACTS

1. The Incident

In the late afternoon of February 23, 2012, plaintiff was at defendant's barber shop on Crenshaw Boulevard in Inglewood getting a haircut. Defendant had operated the barber shop there for over 50 years. According to plaintiff's deposition testimony, the assailant walked into the shop through the front door. When plaintiff saw him walking in, he thought nothing of it. Plaintiff thought the assailant was "there for a haircut" or "to sell something." Plaintiff testified "there was no reason at that point to have any fear of [the assailant]." The assailant walked about 40 feet into the shop, and "there was no visible gun in his hand."

Defendant's declaration similarly stated that she "saw the assailant through the window before he entered" the premises; she "did not believe the assailant was dangerous or posed a threat when he entered"; she "had no reason to suspect the assailant was anything other than a prospective customer or a vendor"; she "did not know the assailant carried a weapon when he entered [the] premises because his gun was not visible"; and "[e]ven if there had been a security door with a buzzer, I would have buzzed the assailant through the door because I had no reason to believe he was violent."

According to defendant, the assailant "pulled out a very large gun and said it was a robbery and he told us to give him all the money. [¶] And before anything happened with the money, [plaintiff] made an exit to the back room and he and the guy that [was] robbing us were shooting at each other." Plaintiff "got shot three times."

2. The Complaint

Plaintiff filed his complaint in January 2014, seeking damages for defendant's acts, "negligent, intentional, and otherwise." The complaint alleged defendant negligently owned and operated the business "in such a way so as to create a dangerous and unsafe condition that created a reasonably foreseeable risk of the kind of injury which occurred." Plaintiff alleged defendant knew of several robberies at nearby businesses; "acknowledged, knew, and intended to put in a security door to deter and prevent robberies"; and "negligently delayed and put off installing a security door," resulting in plaintiff's injuries.

3. The Motion for Summary Judgment

Defendant moved for summary judgment in November 2015. Defendant contended she had no duty to protect plaintiff from the criminal acts of a third party, because there had never been any similar violent crimes on her premises. She further contended the failure to install a security door did not cause plaintiff's injuries, because she had no reason to prevent the assailant's entry on the premises, as he appeared to pose no threat. Defendant presented her own declaration, deposition testimony from plaintiff, and discovery responses to support her contentions.

Plaintiff opposed defendant's motion, submitting defendant's deposition testimony as his supporting evidence. At her deposition, defendant admitted she had no security measures, admitted she had knowledge of criminal activity in the vicinity, admitted that she considered providing a security door, and (according to plaintiff) "admitted that it would have been a deterrent." On the last point, defendant testified that, in reaction to the incident, she installed "a screen door that's – that's locked

and a buzzer system where we can buzz people in." When asked why she chose that particular form of security measure, she replied, "That was the only thing I knew that would work for a barber shop, so we could let people in. I don't know." Counsel then asked her if she believed "that type of entry and exit would be a deterrent for criminals." Defendant answered: "I guess. I felt better." The security door cost about $400.

Based on defendant's testimony (summarized further in the margin),[2] plaintiff contended: "No security or failing to provide

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[2] Defendant testified in response to several questions that she had considered putting in a security gate because of the worsening crime rate in her neighborhood, including robberies of a nearby nail shop and a nearby beauty supply, a rape committed in the alley behind her barber shop, and an increase in graffiti and the presence of gang members.

She testified she did not act "[j]ust because you kind of think it's going to go away and I just didn't do it. And after being here for 44 years, maybe I was just going on hope that it was going to get better and it wasn't getting better. It was getting worse." There was also a shooting across the street, but "[t]hat was between a barber and a customer." Defendant again considered putting in a security gate, but "I just didn't. I kept thinking I needed to do it, but I didn't do it, thinking maybe it's not going to happen to me because it never had, but after all the things that have happened, I know I should have done it." Defendant testified that the "[i]nsurance man" on the corner put in a security gate and cameras, and "[o]nce again, I did [consider putting a security gate in front], but I didn't do it, probably for the same reason."

Counsel asked defendant if, "when each these instances that you've described occurred," she "believe[d] that it was more likely that there was a chance you could get robbed," and defendant replied, "Yes." Counsel asked defendant if "one of the

an intended security measure establish both duty and breach. Because the Defendant admitted that such conduct would have been a deterrent, under the circumstances, the ultimate conclusion is that it was only a matter of time before a robbery occurred."

The trial court granted defendant's motion for summary judgment. As described at the outset, the court found it was "foreseeable that violent crime may occur" on defendant's premises, but that plaintiff failed to meet his burden "to provide non-speculative evidence showing that Defendants' failure to provide the aforementioned security measures caused Plaintiff's injury."

The trial court entered judgment in defendant's favor. Plaintiff filed a motion for a new trial that was denied by operation of law.

Plaintiff filed a timely notice of appeal.

DISCUSSION

1. The Standard of Review

A defendant moving for summary judgment must show "that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) Summary judgment is appropriate where "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (*Id.,* subd. (c).)

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reasons you considered [putting in a security gate] was because you believed it was foreseeable something like this could happen to you," and defendant said, "Yeah, yes."

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was " 'to liberalize the granting of [summary judgment] motions.' " (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854 (*Aguilar*).) It is no longer called a "disfavored" remedy. (*Perry,* at p. 542.) "Summary judgment is now seen as a 'particularly suitable means to test the sufficiency' of the plaintiff's or defendant's case." (*Ibid.*) On appeal, "we take the facts from the record that was before the trial court . . . . ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' " (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037, citations omitted.)

2. The Applicable Legal Principles

Before we turn to plaintiff's contentions, we describe briefly the legal principles that apply when a plaintiff, "injured on defendants' premises by the criminal assault of unknown assailants, seeks to recover damages from defendants on the theory that they breached their duty of care toward her." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 772 (*Saelzler*).) "[T]o prevail in such a case, the plaintiff must show that the defendant owed her a legal duty of care, the defendant breached that duty, *and the breach was a proximate or legal cause of her injury*." (*Ibid.*, citing *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1188 (*Sharon P.*) and *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673 (*Ann M.*).)[3]

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[3] *Sharon P.* and *Ann M.* were disapproved on another point in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527, footnote 5.

A landlord's general duty to maintain premises in a reasonably safe condition includes "the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures." (*Ann M., supra,* 6 Cal.4th at p. 674.) The scope of the duty "is determined in part by balancing the foreseeability of the harm against the burden of the duty to be imposed. [Citation.] ' "[I]n cases where the burden of preventing future harm is great, a high degree of foreseeability may be required. [Citation.] On the other hand, in cases where there are strong policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required." [Citation.]' [Citation.] Or, as one appellate court has accurately explained, duty in such circumstances is determined by a balancing of 'foreseeability' of the criminal acts against the 'burdensomeness, vagueness, and efficacy' of the proposed security measures." (*Id.* at pp. 678-679.)

In *Ann M.*, the court concluded "a high degree of foreseeability is required in order to find that the scope of a landlord's duty of care includes the hiring of security guards," and "the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises." (*Ann M., supra,* 6 Cal.4th at p. 679.) The court then noted that "[i]t is possible that some other circumstances such as immediate proximity to a substantially similar business establishment that has experienced violent crime on its premises could provide the requisite degree of foreseeability." (*Id.* at p. 679, fn. 7.)

Sharon P. was also disapproved on another point in *Aguilar, supra,* 25 Cal.4th at page 853, footnote 19.

Assuming the existence of a duty of care, a plaintiff must also show causation. "We did not intend to suggest in [another case] that a general finding of the foreseeability of some kind of future injury or assault on the premises inevitably establishes that the defendant's omission caused plaintiff's own injuries. Actual causation is an entirely separate and independent element of the tort of negligence." (*Saelzler, supra,* 25 Cal.4th at p. 778.) "[T]o demonstrate actual or legal causation, the plaintiff must show that the defendant's act or omission was a 'substantial factor' in bringing about the injury. [Citations.] In other words, plaintiff must show some substantial link or nexus between omission and injury." (*Ibid.*)

3. Contentions and Conclusions

Plaintiff first contends (as the trial court found) that defendant had a duty to provide "some security measures," and defendant breached that duty "by failing to have any security measures whatsoever to deter criminal conduct." Defendant contends to the contrary, asserting that the absence of prior similar violent acts "on the premises itself" precludes a finding of foreseeability.

It is unnecessary to resolve the parties' dispute over defendant's duty of care and its scope. While the underlying facts are different, the principle applied in *Saelzler* applies here, too. This is a case where, "assuming the defendant owed and breached a duty of care to the plaintiff, [plaintiff] nonetheless cannot prevail unless [he] shows the breach bore a causal connection to [his] injury." (*Saelzler, supra,* 25 Cal.4th at p. 773 [referring to three Court of Appeal cases cited with approval in *Sharon P., supra,* 21 Cal.4th at p. 1197]; see *ibid.*, quoting *Sharon P.* at pp. 1196-1197, italics added in *Saelzler* [in *Sharon*

P., "[w]e noted that the courts 'have rejected claims of abstract negligence pertaining to the lighting and maintenance of property *where no connection to the alleged injuries was shown.*' "].)

This is just such a case: a claim of abstract negligence – the absence of a security gate or any other security measure – with no demonstrated connection to plaintiff's injuries. Where it is undisputed that the assailant would have been permitted entrance to defendant's shop even if there had been a security gate, it is impossible to establish any connection between the lack of such a gate and plaintiff's injuries.

Saelzler is instructive and, in our view, definitive. There, the court observed that, because of prior criminal assaults on the premises (a fact not present here), the defendants "may have owed a duty to provide a reasonable degree of security" to persons entering the premises, and "[f]or purposes of discussion," assumed the defendants breached that duty by failing to keep entrance gates locked and functioning, and failing to provide additional daytime security guards. (*Saelzler, supra,* 25 Cal.4th at p. 775.) But the evidence "fail[ed] to show that either breach contributed to plaintiff's injuries." (*Ibid.*) This was because the plaintiff's assailants might have been unauthorized trespassers, but also could have been tenants in the defendants' apartment complex, and " '[a] mere possibility of such causation is not enough.' " (*Id.* at pp. 775-776.)

Saelzler is clear. "[T]he rule [is] that the plaintiff must establish, by nonspeculative evidence, some actual causal link between the plaintiff's injury and the defendant's failure to provide adequate security measures." (*Saelzler, supra,*

25 Cal.4th at p. 774.) The court described with approval several Court of Appeal decisions demonstrating the point.

"[C]losest on point" was *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472 (*Leslie G.*). (*Saelzler, supra,* 25 Cal.4th at p. 774.) *Saelzler* explains that in *Leslie G.,* "the plaintiff alleged she was raped by an unknown assailant while in the garage of her apartment building. She sued the building owners, asserting their negligence in *failing to repair a broken security gate* might have allowed her assailant to enter the garage. [T]he plaintiff's security expert testified at his deposition that the apartment was located in a high-crime area, that functioning security gates were critical to ensuring tenants' safety, and that the nonfunctioning gates allowed the assailant to enter and ultimately assault the plaintiff." (*Saelzler,* at p. 774.) (The expert in *Leslie G.* stated, among other things, "that the assailant had selected the garage because of its isolated, remote nature, and the opportunities to hide and escape if necessary." (*Saelzler,* at p. 774, citing *Leslie G.,* at pp. 478-479.))

Leslie G. concluded the expert's testimony "fail[ed] to establish a ' "reasonably probable causal connection" ' between the defendant's negligence and the plaintiff's injury." (*Saelzler, supra,* 25 Cal.4th at p. 775, quoting *Leslie G., supra,* 43 Cal.App.4th at p. 487.) *Saelzler* quoted *Leslie G.* with approval and at length, finding it fully supported the *Saelzler* trial court's summary judgment ruling:

" '[A] tenant's negligence action against her landlord for injuries resulting from the criminal assault of a third person must be supported by evidence establishing that it was *more probable than not* that, but for the landlord's negligence, the assault would not have occurred. Where, as here, there is

evidence that the assault could have occurred even in the absence of the landlord's negligence, proof of causation cannot be based on mere speculation, conjecture and inferences drawn from other inferences to reach a conclusion unsupported by any real evidence, or on an expert's opinion based on inferences, speculation and conjecture. [¶] In this case, where there is no factual basis for the expert's opinion or for [the plaintiff's] general assertion of causation, the conclusion is unavoidable that summary judgment was properly granted.' " (*Saelzler, supra,* 25 Cal.4th at p. 775, quoting *Leslie G., supra,* 43 Cal.App.4th at p. 488, italics added in *Saelzler*.)

Of course, the facts of this case differ from those in *Saelzler* and *Leslie G.*, but the causation principle is the same. Assuming defendant had a duty to provide a security gate – the only duty plaintiff posits – plaintiff produced no evidence that defendant's omission to do so contributed to plaintiff's injuries. Here, the evidence showed plaintiff's injury would not have been prevented by a security gate because the assailant appeared to pose no threat and therefore would have been buzzed into the shop.

Plaintiff's claim that there is a material dispute on causation appears to rest on several assertions, none of which has merit.

First, plaintiff asserts there is a "distinction between no security measures [as in this case] and inadequate security measures [as in *Saelzler* and other cases]." Of course the facts are different, but plaintiff cites no authority suggesting that a different analysis of causation should apply. Indeed, the cases plaintiff cites as involving "no security at all" do *not* in fact

involve "no security at all," and are in any event entirely different from this case, as noted in the margin.[4]

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[4] Plaintiff tells us that *Mukthar v. Latin American Security Service* (2006) 139 Cal.App.4th 284 supports the notion that where there is no security, "there is a reasonable inference that the crime would have occurred." *Mukthar* does nothing of the sort. *Mukthar* was not a lawsuit against the owner; it was a suit against the security company that was hired to provide security in the store. The defendant did not contest that an armed guard (who was usually stationed "in very close proximity" to the employee-victim when he was assaulted) should have been (but was not) on the premises when the assault occurred. (*Id.* at pp. 287, 291.) The case involved the negligent undertaking doctrine, and the "ultimate question" was whether there was evidence that the defendant's failure to furnish a security guard increased the risk of the harm that befell the employee-victim. (*Id.* at p. 293.) The court rejected the trial court's conclusion it was conjectural whether a security guard could have prevented the attack; the court observed it was "more likely than not that the [assailant] would not have hit [the victim] in the face in the close proximity of an armed guard who had the ready means at hand to respond physically to violence." (*Id.* at p. 291.)

Plaintiff similarly asserts that in *Janice H. v. 696 North Robertson, LLC* (2016) 1 Cal.App.5th 586, the court concluded that "a lack of security alone can establish a triable issue [of] fact for the jury." Again, *Janice H.* says nothing of the sort and plaintiff completely misreads the case. *Janice H.* found substantial evidence supported a jury's finding of causation, as it was "reasonable to conclude that had a security guard been present in the restroom area when Plaintiff entered, the assault and rape would not have occurred." (*Id.* at p. 598.) The defendant employed eight to 10 guards posted throughout its bar and dance club, including in the restroom area, and the guards routinely took action to prevent sexual activity and drug use in the rest room area. No guard was present at the time of the rape;

Second, plaintiff says the "correct question" is "whether the absence of any security whatsoever, including the lack of a buzz in door, was a substantial factor *in the robber targeting [defendant's] establishment*." (Italics added.) Plaintiff cites no authority that supports this proposition either, and it is demonstrably wrong. The question is whether the lack of reasonable security measures – and the only one suggested is the security door – was a substantial factor "in bringing about the injury." (*Saelzler, supra,* 25 Cal.4th at p. 778.) *Saelzler* expressly tells us that "a general finding of the foreseeability of some kind of future injury or assault on the premises" does *not* establish "that the defendant's omission caused plaintiff's own injuries." (*Ibid*.) Perhaps more to the point, plaintiff produced no evidence – expert or otherwise – to support his suggestion that the robber chose to rob defendant's barber shop because of the lack of a security door. That notion is an example of the speculation and conjecture that case precedents reject.

Third, plaintiff tells us that causation is established by defendant's testimony that she "simply neglected" to install a buzz-in security door and that such a door "would have made a robbery less likely and would have acted as a deterrent." (Defendant answered affirmatively when counsel asked her if, when she considered putting a security gate in, "one of the reasons you considered it was because you believed it was foreseeable something like this could happen to you?") According

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defendant, who "fostered a sexually charged atmosphere," was found to have a duty to post a guard in the restroom area whenever the club was open to the public. (*Id.* at pp. 590, 595, 597.) *Janice H.*'s causation analysis in no way supports plaintiff's claim.

to plaintiff, defendant's testimony "creates a triable issue of fact on causation." It does not. That testimony may be relevant to breach of duty, but it has nothing to do with causation.

As *Saelzler* tells us: "No matter how inexcusable a defendant's act or omission might appear, the plaintiff must nonetheless show the act or omission caused, or substantially contributed to, her injury. Otherwise, defendants might be held liable for conduct which actually caused no harm, contrary to the recognized policy against making landowners the *insurer* of the absolute safety of anyone entering their premises." (*Saelzler, supra,* 25 Cal.4th at p. 780.)

Because plaintiff presented no evidence that controverts defendant's evidence that causation cannot be established, defendant's motion for summary judgment was properly granted.

DISPOSITION

The judgment is affirmed. Defendant is to recover its costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.